



ON-THE-JOB

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Legislative Wrap up 2009

The 2009 General Session of the Utah Legislature enacted several bills affecting programs administered by the Utah Labor Commission.

At the Commission's request and with the support of the Workers' Compensation Advisory Council, Senator Mayne and Rep. Morley sponsored the following workers' compensation bills:

H.B. 39—amends and reauthorizes Title 34A, Chapter 8, the Utah Injured Worker Reemployment Act.

H.B. 271—grants the Uninsured Employers Fund authority, beginning July 1, 2010, to hire counsel and other personnel to collect money owed to the UEF.

S.B. 120—repeals a statutory requirement that the Commission transmit medical panel reports by certified mail.

S.B. 121—authorizes the Commission to require employers/insurance carriers to pay injured workers' attorneys fees in claims for medical care, provided that the case does not also include a claim for disability compensation that exceeds \$4,000.

Additionally, Senator Mayne sponsored **1st sub. S.B. 15**, which authorizes use of workers'

compensation premium assessments to fund the Labor Commission's Adjudication Division and Industrial Accidents Division, and to partially fund the Rocky Mountain Center for Occupational & Environmental Health. The bill also reduces the maximum rate of premium assessments to reflect the fact that the Employer's Reinsurance Fund is approaching actuarial soundness and will require less funding in the future.

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Legislative Wrap up 2009

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Two other bills dealing with workers' compensation issues are **1st Sub HB 308** (Rep. Ipson), which exempts motor carrier owners/operators from workers' compensation coverage requirements under some circumstances, and **H.B. 32** (Rep. Ferry), which repealed a misdemeanor criminal sanction that could be imposed against medical providers who failed to provide reports required by the Commission.

Finally, in the area of employment law, **H.B. 206** (Rep. Harper) imposes new limitations on employers' ability to collect, use and retain certain types of personal information from job applicants. The bill allows the Commission to investigate alleged violations and impose penalties of up to \$500 per violation.

Mine Safety Technical Advisory Council Established

Members of the Mine Safety Technical Advisory Council (Council) for the Office of Coal Mine Safety (OCMS) have been appointed. The OCMS was established in 2008 by the Mine Safety Act and works as an integral partner with all entities of the coal mine industry and coal miner certification officials. The Mine Safety Act also establishes the Council and defines the categories for each member appointed by the Utah Labor Commissioner. The purpose of the Council is to maximize coal mine safety and advise the OCMS on all related issues.



Voting members, appointed to a four year term, include:

Mike Dalpaiz - International Vice President, United Coal Mine Workers of America; **Steven Childs** - Skyline Mine; **Don Shelly** - Deer Creek Mine; **John Byars** - Manager of Engineering, Sufco Mine-Arch Coal; **Jimmy Brock** - Senior V.P., Consol Energy; **Robert Weyher Jr.** - President, Utah Mining Association; **Lamar Guymon** - Sherriff, Emery County; **Terri Watkins** - Chief Nursing Office, Castle View Hospital; **Walter Arabaz** - Professor, U. of U. Dept. of Geology and Geophysics; **Kim McCarter** - Professor, U. of U. Mining Engineering Department; **Ralph Sanich** - Manager of Health, Safety & Training - Interwest Mining Company; **Randy Tatton** - President, Mining Health & Safety Solutions; and **Miles Nelson** - Associate V.P., College of Eastern Utah.

Non-voting members include:

Sherrie Hayashi - Utah Labor Commissioner; **Bruce Riches** - Captain, Department of Public Safety; **John Baza** - Director, Division of Oil, Gas and Mining - Dept. of Natural Resources; **J.D. McKenzie** - Acting Branch Chief, U.S. Dept. of the Interior- Bureau of Land Management; **Allyn C. Davis** - District 9 Manager, Mine Safety and Health Administration.

The Council meets quarterly and held its first meeting Tuesday, April 21, 2009. The agenda included a review of the Coal Mine Safety Act, a review and discussion of the Utah Mine Safety Commission Report and Recommendations, and development of a plan to prioritize and implement those recommendations.

For further information or questions regarding the meeting, please call Garth Nielsen, Director of the Office of Coal Mine Safety at (435) 636-1467.

Governor Jon Huntsman, Jr. Declares April Fair Housing Month

Whereas, Title VIII of the Civil Rights Act, which guarantees fair housing for all residents of the United States, was signed into law in April 1968; and

Whereas, the Month of April is nationally recognized as Fair Housing Month and a time to reflect on and reaffirm our national commitment to the ideal that fair housing opportunity is available to everyone in the United States without regard to race, color, religion, national origin, sex, familial status and disability; and

Whereas, the State of Utah, which passed its own fair housing act in 1989, recognizing and affirming that all persons in the State of Utah are free to purchase, rent, finance and insure their homes without regard to their race, color, religion, sex, national origin, familial status, disability or source of income; and

Whereas, the Utah Labor Commission Antidiscrimination and Labor Division, the United States Department of Housing and Urban Development, the State of Utah Department of Community and Culture, Division of Housing and Community Development, the Utah Association of Realtors, the Utah Apartment Association and the Utah Housing Coalition and many other individuals and organizations are jointly committed to the principal of fair housing for all and are committed to all efforts that address discrimination in our communities, support all programs that will educate the public concerning their rights to equal housing opportunity and to actively plan and participate in partnership efforts with other organizations to assure every person their right to live free of the debilitating affects of housing discrimination and to enjoy fair housing rights;

Now, Therefore, I Jon M. Huntsman Jr., Governor of the State of Utah do hereby declare
April 2009

FAIR HOUSING MONTH



Governor Jon Huntsman Jr. signs declaration in his office surrounded by representatives of the Utah Labor Commission, U.S. Department of Housing and Urban Development.

**2009
Big 4 Phase II
Residential
and
Commercial
Construction
Safety Emphasis
Initiative**



Utah OSHA Announces BIG 4 Phase II

The Utah Labor Commission, Occupational Safety and Health Division (UOSH) announces THE 2009 CONSTRUCTION INSPECTION EMPHASIS INITIATIVE named BIG 4 Phase II, which will be conducted this year at residential and commercial construction job sites statewide, from 04/15/09 to 8/30/09.

The Big 4 Phase II for residential construction is designed to help identify and eliminate hazards at residential construction job sites associated with the four major causes of fatalities, accidents and injuries in the state of Utah:

- Falls from elevations (e.g., roofs, floors, platforms, aerial lifts and equipment).
- Struck by (e.g., falling objects, vehicles and equipment).
- Caught in/between (e.g., excavation/trench cave-ins, machinery, and equipment).
- Electrical (e.g., power lines, power tools, cords, outlets, temporary wiring).

The Big 4 Phase II for commercial construction is designed to help identify and eliminate hazards associated with:

- Falls from elevations (e.g., roofs, floors, platforms, aerial lifts and equipment).
- Crane and rigging safety (construction cranes, mobile cranes, tower cranes)

In all inspections Compliance Safety and Health Officers (CSHO's) will visit both residential and commercial construction job sites to:

Determine if serious hazards or imminent danger situations are present. In these cases, an opening conference will be conducted and the inspection process will begin, as prescribed by Section R614-1-7.G of the Utah Administrative Code.

Determine if an effective safety and health program has been implemented. If an effective safety and health plan is not in place, an opening conference will be conducted and the Big 4 inspection process will begin, as prescribed by Section R614-1-7.G of the Utah Administrative Code.

Determine if Citations and proposed penalties need to be issued for alleged serious violations found during the inspection, as prescribed by Utah Administrative Code R614-1-7.

Determine if no serious hazards or violations are observed and a safety program is in place. In these cases, the CSHO will conduct only an on site assistance intervention.

UOSH remains committed to the safety and health of Utah's workers in the construction industry by taking positive steps to maximize the protection of employees and eliminate workplace hazards at both residential and commercial construction sites. For more information, visit <http://uosh.utah.gov/> or contact Eldon Tryon, UOSH Compliance Manager at (801) 530- 6901.

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Appellate Decisions

This article usually deals with appellate decisions in appeals of Labor Commission decisions. This time, two decisions arise from proceedings before the district courts but nevertheless involve Utah's workers' compensation system. Two other decisions involve appellate review of Labor Commission decisions. Each appellate decision can be read in full at www.utcourts.gov/courts/appell/.

Helf v. Chevron U.S.A.; (2009 UT 11, issued February 13, 2009). In an effort to neutralize toxic sludge at the Chevron refinery, supervisors directed Ms. Helf to add sulfuric acid to the sludge. The supervisors gave this assignment to Ms. Helf even though the same process had been attempted earlier, resulting in release of noxious gasses that caused several employees to become ill. When Ms. Helf attempted the process, she too was overcome by the gasses. She experienced temporary unconsciousness and suffered other physical problems. Ms. Helf sued Chevron in district court for intentional misconduct. The district court dismissed the suit on the workers' compensation system provided Ms. Helf's "exclusive remedy" against Chevron.

The Utah Supreme Court reversed the district court and held that Ms. Helf was entitled to seek damages from Chevron in addition to her workers' compensation benefits. The Supreme Court noted that the workers' compensation system's exclusive remedy does not apply when an employer "intentionally" injures an employee. The Court then analyzed the meaning of "intentional," which it defined as the employer's knowledge or expectation that an injury will occur to an employee as a consequence of performing a specific task.

Workers Compensation Fund et al. v. Wadman Corp. et al.; (2009 UT 18, issued March 24, 2009). Washington County School District contracted with Wadman to construct a school building. Wadman in turn contracted with Iverson to perform part of the work. Argonaut was to provide workers' compensation insurance for the entire project, and Wadman was responsible for enrolling all subcontractors for coverage by Argonaut. However, Wadman overlooked enrolling Iverson as one of Argonaut's insureds until after an Iverson employee was injured. Iverson did have work-

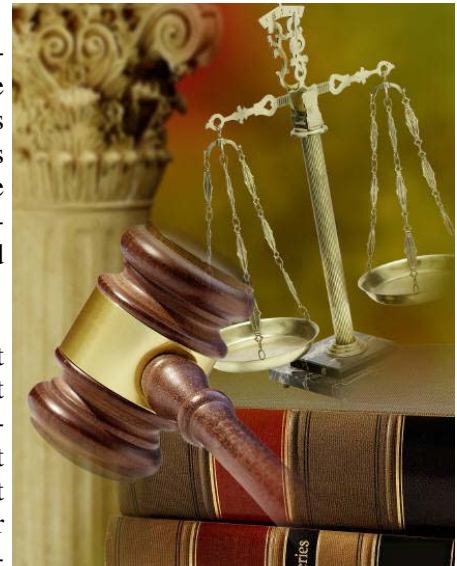
ers' compensation insurance coverage for its other activities through the Workers' Compensation Fund ("WCF").

WCF filed suit in the district court to establish whether it or Argonaut was liable for the injured employee's

worker's compensation benefits. The district court ruled that Argonaut was not liable. WCF then appealed to the Supreme Court, raising four different agency, contract, and workers' compensation arguments. The Supreme Court rejected three of these arguments but accepted one—that Argonaut was liable for benefits because it insured Wadman, and Wadman was Mr. Searle's "statutory employer." under § 34A-2-103(7) of the Utah Workers' Compensation Act. Specifically, the Supreme Court found that Wadman had: 1) procured Iverson's services; 2) exercised control over Iverson's work; and 3) Iverson's work was a part of Wadman's overall construction business.

Dale T Smith & Sons et al. v. Utah Labor Commission and Jeffrey D. Smith; (2009 UT 19, issued April 7, 2009). The Utah Supreme Court's opinions in this case and a companion case (*Ameritech v. Labor Commission*, 2009 UT 20, issued April 7, 2009) establish that a worker's entitlement to medical benefits under the Utah Occupational Disease Act is limited by the apportionment formula found in § 34A-2-110 of the Act.

The Labor Commission had held that § 110's apportionment formula applied only to "compensation" which, in the context of this statute, did not include



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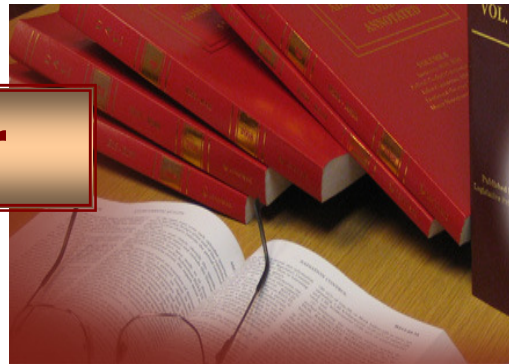
Appellate Decisions

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medical benefits. Consequently, in the Commission's view, employers and insurance carriers were liable for the full reasonable cost of medical care necessary to treat an occupational disease. The Utah Court of Appeals upheld the Commission's interpretation of § 110. At the request of the employer and insurance carrier, the Utah Supreme Court agreed to consider the matter. Ultimately, the Supreme Court reversed the judgments of the Court of Appeals and the Labor Commission.

In considering the meaning of the term "compensation" which is subject to apportionment under § 110 of the Occupational Disease Act, the Supreme Court noted that § 34A-2-102(1)(c) of the Workers' Compensation Act defines "compensation" as "payments and benefits" for purposes of **both** the Occupational Disease Act and the Workers' Compensation Act. The Supreme Court held that this broad definition of "compensation" included medical benefits; consequently, such benefits are subject to apportionment under § 110.

The Rules Corner



Pursuant to authority granted by the Utah Legislature, the Commission has recently adopted or is considering the following substantive rules. If you have questions or concerns about any of these rules, please call the Labor Commission at 801-530-6953.

R602-7 Adjudication	Employment Discrimination Claims. Establishes procedures for adjudicating employment discrimination complaints.	Republished in <i>Utah Bulletin</i> 2/1/09 in order to incorporate minor wording changes; can be effective 5/22/09
R602-8 Adjudication	Occupational Safety & Health Citations. Establishes procedures for adjudicating challenges to occupational safety and health citations.	Republished in <i>Utah Bulletin</i> 2/1/09 in order to incorporate minor wording changes; can be effective 5/22/09
R610-3 UALD	Payment of Wages. Would allow payment of wages by use of "paycards."	Approved by UALD Advisory Council; will be discussed at public hearing—date to be determined.
R612-2-4 Industrial Accidents	Regulation of Medical Practitioner Fees. As part of the Commission's regulation of medical fees, replaces the 2008 version of the RBRVS (Resource Based Relative Value Scale) with the 2009 edition.	Approved by Workers' Compensation Advisory Council; will be discussed at public hearing—date to be determined.
R616-2-3 Boiler, Elevator & Mine Safety	Safety Codes and Rules. Incorporation of ASME Addenda and NBIC new edition into Commission rules governing boilers and pressure vessels.	Effective 2/24/09

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7th Annual Labor Commission Workers' Compensation Educational Conference

May 14, 2009 8:00 am— 4:15 pm State Office Bldg. Auditorium—Capitol Complex

Who should attend? Everyone in Utah who is involved in workers' compensation in Utah will benefit from this conference. For registration information, please contact JoAnn Lowther at (801) 530-6844 or jlowther@utah.gov

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